

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

ARI GOLD,

Plaintiff,

v.

**Civil Action No. 2:21-CV-00150
Honorable Thomas E. Johnston**

**CITY OF PARKERSBURG, THOMAS JOYCE
BOBBY MCCLUNG, RICHARD GOFF,
JASON MATTHEWS, SHANE SEMONES,
JOHN DOE NO. 1, JOHN DOE NO. 2,
AND JOHN DOE NO. 3,**

Defendants.

**DEFENDANTS CITY OF PARKERSBURG, THOMAS JOYCE,
BOBBY MCCLUNG, RICHARD GOFF, JASON MATTHEWS, AND
SHANE SEMONES' MOTION TO DISMISS**

NOW COME the Defendants, City of Parkersburg, Thomas Joyce, Bobby McClung, Richard Goff, Jason Matthews, and Shane Semones, by counsel, Cy A. Hill, Jr., Allison M. Subacz and Cipriani & Werner, P.C., and hereby move this Honorable Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss all claims against them as Plaintiff has failed to state a viable cause of action against the Defendants. In support of this motion, the Defendants state as follows:

1. The Plaintiff's Complaint alleges as follows. On or about February 26, 2021, Defendants Goff, McClung, Joyce, Semones, and several other unidentified police officers were present at the subject property located at 814-816 Market Street Parkersburg, WV. While Plaintiff was not present at the time, an independent contractor who was present, called Plaintiff. Plaintiff indicated that he would not consent to a search of the premises without a warrant. Complaint, ¶ 16, 17.

2. Defendants Semones, Goff, McClung, and Matthews went up the fire escape to the door on the second floor. *Id.* at ¶ 23. Defendant Semones opened the door and the defendants walked inside to perform a search. According to the Complaint, Defendants did not have an administrative warrant or a warrant to search the premises and provided no justification for the search that would amount to an exception to the Fourth Amendment. *Id.* at ¶ 25.

3. At some point, Defendants McClung, Goff, Matthews, and Semones left the building, but remained on the premises. A Labor Inspector with the West Virginia Department of Labor was called to the premises. *Id.* at ¶ 34. Labor Inspector Marla Neogra from the West Virginia Department of Labor arrived at the premises and spoke to Plaintiff via telephone and to the three independent contractors. *Id.* at ¶ 35. Labor Inspector Neogra finished her paperwork and all Defendants left the premises. *Id.* at ¶ 36.

4. Defendant McClung prepared a notice that they would return to search the premises Monday March 1, 2021 at 12:00 noon and provided to counsel for the Plaintiff. *Id.* at ¶ 37. Plaintiff, through counsel, informed Defendants Joyce and McClung that they did not have Plaintiff's consent to conduct the search on March 1, 2021 or any time thereafter without a warrant. *Id.* at ¶ 38.

5. The Complaint sets forth the following causes of actions against the Defendants.

Count One – Unreasonable Search & Seizure in Violation of the Fourth Amendment under 42 U.S.C. § 1983.

Count Two- Bystander Liability

Count Three- Supervisory Liability Under 42 U.S.C. § 1983

Count Four – State Law Negligence Claim

6. The Defendants contend that these Counts fail to state a claim upon which relief can be granted for the following reasons:

(a) The Defendants did not violate Plaintiff's constitutional rights. West Virginia law provides municipalities the authority to provide for the entering and inspection of private premises to aid in the enforcement of any states law or municipal ordinance;

(b) Alternatively, the Defendants are entitled to qualified immunity as their actions did not violate any of the Plaintiff's clearly established constitutional rights;

(c) Mayor Thomas Joyce cannot be held liable for a claim of supervisory liability as no such claim exists under West Virginia law. Alternatively, Plaintiff's claim for supervisory liability still fails as the Plaintiff has failed to plead sufficient allegations to show that the city employees violated the Fourth Amendment so as to impose any such liability;

(d) The City of Parkersburg cannot be held vicariously liable for the actions of its employees were purely intentional in nature and a political subdivision cannot be held liable for an employee's intentional acts. Mallamo v. Town of Rivesville, 197 W.Va. 616, 477 S.E.2d 525 (1996); and

(e) The Plaintiff failed to plead a cognizable negligent supervision and training claim against the City as all of the allegations in the Complaint sound in intentional conduct.

The Defendants incorporate their supporting memorandum of law in support of their motion.

WHEREFORE, for the reasons articulated above and in the attached memorandum of law, the Defendants City of Parkersburg, Thomas Joyce, Bobby McClung, Richard Goff, Jason Matthews, and Shane Semones respectfully move this Honorable Court to dismiss all of Plaintiff's claims against them and for any other relief deemed appropriate by the Court.

/s/ Cy A. Hill, Jr.

Cy A. Hill, Jr. (WVSB ID No. 8816)

Allison M. Subacz (WVSB ID No. 11378)

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2021, I caused service of the foregoing **DEFENDANTS CITY OF PARKERSBURG, THOMAS JOYCE, BOBBY MCCLUNG, RICHARD GOFF, JASON MATTHEWS, AND SHANE SEMONES' MOTION TO DISMISS** to be made upon counsel of record by Electronic Mail:

Anne C. Labes, Esquire
Anne C. Labes, Attorney at Law
1160 Bethel Road
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Counsel for Plaintiff

/s/ Cy A. Hill, Jr.
Cy A. Hill, Jr. (WVSB ID No. 8816)
Allison M. Subacz (WVSB ID No. 11378)